

PUBLIC SERVICE COMMISSION

Budget Summary							
Fund	2002-03 Base Year Doubled	2003-05 Governor	2003-05 Jt. Finance	2003-05 Legislature	2003-05 Act 33	Act 33 Change Over Base Year Doubled	
						Amount	Percent
FED	\$324,800	\$337,200	\$337,200	\$337,200	\$337,200	\$12,400	3.8%
PR	31,184,200	30,793,500	31,832,700	31,832,700	31,832,700	648,500	2.1
SEG	<u>13,760,000</u>	<u>11,000,000</u>	<u>11,000,000</u>	<u>11,000,000</u>	<u>11,000,000</u>	<u>- 2,760,000</u>	- 20.1
TOTAL	\$45,269,000	\$42,130,700	\$43,169,900	\$43,169,900	\$43,169,900	- \$2,099,100	- 4.6%

FTE Position Summary						
Fund	2002-03 Base	2004-05 Governor	2004-05 Jt. Finance	2004-05 Legislature	2004-05 Act 33	Act 33 Change Over 2002-03 Base
FED	1.00	1.00	1.00	1.00	1.00	0.00
PR	<u>190.50</u>	<u>172.50</u>	<u>179.50</u>	<u>179.50</u>	<u>179.50</u>	<u>- 11.00</u>
TOTAL	191.50	173.50	180.50	180.50	180.50	- 11.00

Budget Change Items

Departmentwide

1. STANDARD BUDGET ADJUSTMENTS

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	\$0	\$138,400	\$138,400
FED	\$12,400	\$0	\$12,400
PR	1,259,000	- 138,400	1,120,600
SEG	<u>- 2,760,000</u>	<u>0</u>	<u>- 2,760,000</u>
Total	- \$1,488,600	- \$138,400	- \$1,627,000

Governor: Provide standard adjustments to the base budget totaling \$6,200 FED, \$628,200 PR, and -\$1,880,000 SEG in 2003-04 and \$6,200 FED, \$630,800 PR, and -\$880,000 SEG in 2004-05. Adjustments are for: (a) turnover reduction (-\$259,800 PR annually); (b) removal of

noncontinuing elements from the base (-\$95,000 PR and -\$1,880,000 SEG in 2003-04 and -\$95,000 PR and -\$880,000 SEG in 2004-05); (c) full funding of continuing salaries and fringe benefits (\$6,200 FED and \$913,800 PR annually); (d) reclassifications (\$2,600 PR in 2004-05); (e) fifth week of vacation as cash (\$69,200 PR annually); and (f) minor offsetting transfers within the same appropriation.

Joint Finance/Legislature: Delete funding for fifth week of vacation as cash (\$69,200 PR annually). Require the agency to lapse to the general fund \$69,200 annually from those PR accounts which these fifth week of vacation as cash payments had been budgeted. Estimate GPR-REV of \$69,200 annually.

[Act 33 Section: 9160(3f)]

2. BASE BUDGET REDUCTIONS

Funding Positions		
PR	- \$472,100	- 11.00

Governor/Legislature: Reduce the Commission's PR general operations appropriation by \$472,100 and 11.0 positions in 2004-05. The base level expenditure authority reductions would be applied to amounts budgeted for salaries and fringe benefits, as follows: (a) delete \$53,600 and 1.0 position from the Office of Commissioners; (b) delete \$114,800 and 3.0 positions from the General Counsel staff; (c) delete \$89,600 and 2.0 positions from the Division of Administrative Services; (d) delete \$121,100 and 3.0 positions from the Division of Water, Compliance and Consumer Affairs; (e) delete \$41,200 and 1.0 position from the Telecommunications Division; and (f) delete \$51,800 and 1.0 position from the Electric Division.

3. GPR-EARNED REESTIMATE [LFB Paper 635]

GPR-REV	- \$52,500
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Joint Finance/Legislature: Reestimate GPR-Earned collections for the Commission by -\$52,500 in 2004-05. The reestimate reflects reduced direct and remainder assessments credited to the general fund from public utilities, power districts, sewage systems, municipal utilities, and public service corporations as a result of the base budget reductions applied to 2004-05 Commission operations.

4. UNIVERSAL SERVICE FUND ASSESSMENTS [LFB Paper 630]

Joint Finance: Require any telecommunications provider that adjusts rates to recover some or all of its assessment relating to non-PSC programs for the state Universal Service Fund (USF) to itemize on customers' telecommunications services bills a single amount representing the total adjustment. Require the Commission to supply the providers with the information necessary to make this itemization.

Authorize the Commission to include in the USF assessment of telecommunication providers the amounts necessary to fund a new public library system aid appropriation under

DPI, but repeal the appropriation on June 30, 2005. Make technical corrections to include two current law appropriations (telecommunications access grants to state schools and telecommunications access grants to secured juvenile correctional facilities) in the enumeration of appropriations used in determining the total amount of telecommunication provider assessments. Insert correct references to DOA appropriations in various USF-related TEACH Board appropriations. [See "Public Instruction -- Administration and Other Funding" for additional information.]

Senate/Legislature: Specify that the effective date for the identification on customers' bills of costs relating to non-PSC state USF programs would be the first day of the fifth month following publication of the biennial budget.

Veto by Governor [A-13]: Delete provisions: (a) requiring a telecommunications provider that adjusts rates to recover some or all of its assessment relating to non-PSC programs for the USF to itemize those adjustments on customers' bills; (b) establishing an effective date for the identification of that itemization on customers' bills; and (c) repealing the USF-funded public library system aid appropriation on June 30, 2005.

[Act 33 Sections: 354, 2311d, 2311e, and 2317c]

[Act 33 Vetoed Sections: 354, 2311m, 2311s, and 9443(1qz)]

5. LIMITATION ON ADDITIONAL ASSESSMENTS FOR ENERGY CONSERVATION AND EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS

Joint Finance/Legislature: Prohibit the Commission from requiring any public utility to operate, provide for, or assess customers for any public benefits energy conservation and efficiency and renewable resource program established by DOA. The public utilities would continue to be obligated to transfer base level public benefits funding amounts to DOA as previously determined by the Commission under s. 196.374(3) of the statutes.

Veto by Governor [D-6]: Delete provision.

[Act 33 Vetoed Section: 2317m]

Office of the Commissioner of Railroads

1. ELIMINATION OF THE OFFICE OF THE COMMISSIONER OF RAILROADS [LFB Paper 640]

	<u>Governor</u> <u>(Chg. to Base)</u>		<u>Jt. Finance/Leg.</u> <u>(Chg. to Gov)</u>		<u>Net Change</u>	
	Funding	Positions	Funding	Positions	Funding	Positions
PR	-\$1,177,600	- 7.00	\$1,177,600	7.00	\$0	0.00

Governor: Eliminate the Office of the Commissioner of Railroads (OCR) and delete \$588,800 PR annually on the effective date of the bill. In addition, delete the position of the Commissioner of Railroads and two other PR positions. Eliminate certain functions of OCR and transfer other functions, funding, and the 4.0 PR remaining positions to other state agencies, as follows:

Abolish OCR. Repeal all statutory provisions creating OCR, attaching OCR administratively to the PSC, describing the powers and duties of OCR, providing for a Commissioner of Railroads, setting the term and manner of appointment of the Commissioner, and assigning the Commissioner to an executive salary group.

Transfer Railroad Regulatory Functions to the Department of Transportation (DOT). Provide that DOT shall be responsible for railroad regulatory matters with respect to the following general statutory provisions: Chapter 191 (railroad construction activity); Chapter 192 (railroad regulations and liabilities); Chapter 195 (railroad regulation); and other statutory provisions relating to harbor railroads (Chapter 30), railroad grade crossing improvements (Chapters 84 and 86), authority of turnpike corporations to relocate railroads (Chapter 182), the allocation of costs of railroad industrial spur tracks (Chapter 190), sole, rather than joint, involvement in certain determinations related to discharge into nonfederal wetlands (Chapter 281), and snowmobile rail crossings (Chapter 350). In general, these changes would be accomplished by replacing all references to OCR's duties and responsibilities with corresponding references to DOT.

Transfer Resolution of Contested Railroad Cases to the Division of Hearings and Appeals. For the purpose of resolving contested matters relating to railroad regulation, transfer this authority to the Division of Hearings and Appeals (Division) in DOA. Specify that administrative hearing procedures under Chapter 227 of the statutes would generally apply to these proceedings. Require the Administrator of the Division to assign a hearing examiner to preside over any hearing or review relating to the regulation of any of the following matters: adequacy of railroad fire protection devices; allocation of costs of railroad crossing improvements; adequacy of bridges, culverts, and drainage facilities near railroad rights-of-way; allocation of costs when two railroads intersect and the appropriate type of grade separation, if any, at proposed intersections; allocation of costs of railroad industrial spur tracks; safety and adequacy of

railroad bridges, drawbridges, and fences; removal or transfer of railroad terminals, shops, stations, and agency service; adequacy and cost allocations of grade and highway crossing protections; exemption for vehicles otherwise required to stop at railroad crossings from stopping at a specified crossing; views, trees, and brush near crossings; and the determination of direct and remainder assessments for the costs of railroad regulation. Specify that existing penalties for failure to provide necessary documents or information to OCR or for violating OCR orders would now apply with respect to the Division.

Provide that in hearing these matters, the Division must give due weight to the experience, technical competence, and specialized knowledge of DOT as well as to the discretionary authority conferred upon DOT. Require the Division to give great weight to DOT's interpretation of the statutes and the rules that it administers. Provide that if there is a conflict between this new provision and any other statute relating to a hearing or review conducted by the Division, these new procedures take precedence.

Require that DOT pay the costs of the hearing examiner in accordance with a schedule of fees developed by the Division. Specify that any appeals arising from examiners' decisions be heard by the Administrator of the Division, and that the determination of the Administrator is the final decision of DOA. Allow appeal of the Administrator's decision for judicial review.

Transfer Railroad Corporate Registration Functions to the Department of Financial Institutions (DFI). Require railroad corporations to file the following types of documents with DFI, rather than with OCR, as is currently required: all books of account or stock books as may be required by DFI; designation of a principal office within the state; the annual report to the railroad's stockholders; and certificates issued by DOT for railroad construction or route alteration. Reassign the approval of route maps for proposed railroads from DFI to DOT.

Modify Railroad Regulatory Authority. In transferring railroad regulatory functions to other agencies, make the following changes to the current level of railroad regulation:

Repeal the requirement that, before any railroad track construction may proceed in the state, the railroad must have a certificate that is issued only after a public hearing and upon a finding of "public convenience and necessity." Under the bill, a certificate authorizing construction would be issued by DOT, but a hearing would be discretionary, and there would be no public convenience and necessity standard required. Also, repeal that standard for issuance of certificates of authority for ferry operations.

Eliminate the current OCR role in authorizing the issuance and disposition of railroad corporation securities, including stock and debt instruments, and instead, allow all such activities authorized by DFI or, in the case of railroads engaged in or proposing interstate commerce, the Federal Surface Transportation Board. [The reference to the Federal Surface Transportation Board replaces an outdated reference under current law to the former Interstate Commerce Commission. The bill would also update a second reference to the Interstate Commerce Commission under provisions regarding forms for the state to use in obtaining

information from railroad companies.]

Additionally, repeal:

- The authority and the procedures to investigate and remedy complaints of unreasonable or unjustly discriminatory rates, including interstate rates, and of inadequate service within the state;
- The requirement that railroads furnish reasonably adequate service and facilities and that the charges made be reasonable and just;
- The prohibitions against discriminatory rates, undue or unreasonable carrier preferences, and rebates and concessions received in the furtherance of discriminatory rates;
- The standards with respect to providing free transportation, reduced rates, and passes;
- The authority to prescribe the time and form of rate schedule filings, use of free passes by shippers, rates and charges at elevators and warehouses upon railroad ground, and the manner of providing railroad car service to shippers, including weighing and testing railroad cars and freight;
- The authority to collect information on railroad income and expenditures, construction costs, and debt level;
- The authority to investigate complaints about freight charges and the correctness of freight bills;
- The requirements that railroads maintain transportation contracts and pass lists for certain periods of time and make them available for inspection, as required; and
- Penalties for failure to meet time requirements for erecting overhead warning devices ("telltals") to alert workers of low clearances.

Repeal current law specifications with respect to railroad grade crossing and safety signage. Provide, instead, that such signs would have to be consistent with DOT's required uniform system of signs manual. Allow the use of existing signs until they are replaced or relocated.

Provide that DOT may issue orders on the following matters without holding a public hearing: (a) the installation of protective devices, signs, or safety improvements at railroad crossings; (b) the determination of the type of grade crossing to be used where a railroad intersects a street or another railroad; (c) the granting of an exemption for vehicles otherwise required to stop at railroad crossings from stopping at a specified crossing; (d) the elimination

of existing highway grade crossings associated with highway relocation, improvement, or new construction; and (e) the safety and adequacy of railroad bridges and drawbridges. Provide that DOT shall issue orders based on its investigation and criteria promulgated by rule with respect to such issues (however, specific rule authority is not provided with respect to "(c)"), and that the Division shall hear related appeals. Under current law, a public hearing must be held on all of these matters. Specify that the rule related to the installment of protective devices at railroad crossings may include programming criteria relating to prioritizing those crossings needing protection. Specify that the rule related to highway grade crossings shall include criteria to apportion expenses.

Create a requirement that the Department, notwithstanding its other duties related to grade crossings, must monitor and investigate all such crossings and determine, for each crossing, whether any warning devices, advance warning signs, or other warning measures are required to protect and promote public safety. Specify that DOT may make this determination without a hearing, but also provide that any order may be appealed to the Division. Provide that any device, sign, or other measure at a crossing that conforms to a DOT determination, or, if DOT has not made a determination, that was approved by OCR or the Office of the Commissioner of Transportation, is considered adequate and appropriate warning for the crossing.

Railroad Assessments. On the effective date of the transfer, delete the existing PR appropriation for state funds for OCR and create a new, PR appropriation under DOT to support the transferred railroad regulation activities. Also, authorize the use of the existing segregated appropriation for railroad crossing improvement and protection maintenance, funded from the transportation fund, for purposes of the transferred railroad regulation activities.

Authorize DOT, rather than OCR, to collect direct and remainder assessments from railroads sufficient to support railroad regulatory activities. Specify that 10% of the total amounts collected be deposited in the general fund for the costs of state government operations and the remaining 90% be deposited in the general fund and credited to the new, PR appropriation described above. Clarify that, although collected by DOT, the funds collected from direct and remainder assessments to support railroad regulatory activities would not be deposited in the transportation fund. Delete the provision that specifies that federal funds received for the regulation of railroads are credited to OCR's FED appropriation, rather than being part of the transportation fund.

The bill estimates GPR-Earned receipts from the portion of the assessments described above for state government operations at \$70,600 in 2003-04 and \$71,800 in 2004-05, for a biennial total of \$142,400. The bill reflects these receipts as GPR-Earned by the PSC. However, the administration has indicated that the estimated receipts should be reflected under DOT, rather than the PSC.

Transition Provisions. On the effective date of the bill:

Transfer from OCR 4.0 PR positions and the incumbent employees, as identified by the Secretary of DOT, to DOT. These positions include one program assistant position and three regulation compliance investigator positions. [Funding and position authority for the transferred positions will be included under DOT.]

Delete the remaining 3.0 PR positions of OCR not transferred, including the positions of the Commissioner of Railroads and the two attorneys.

Specify that: (a) all persons transferred would retain the same rights and employee status they held prior to the transfer; and (b) no employee who had attained permanent status in his or her classified position would be required to serve a new probationary period. Finally, include transitional provisions transferring all assets and liabilities, tangible personal property, contracts, rules and orders, and all pending matters from OCR to DOT. Provide that in the event of any disagreements between the Commissioner and the Secretary of DOT with respect to tangible personal property, contracts, rules and orders, and pending matters, the Secretary of DOA would be required to determine the matter and develop a plan for an orderly transfer.

The net effect of the funding and position transfers and deletions associated with this item is as follows:

<u>Agency</u>	<u>Annual Funding Change</u>	<u>Annual Position Change</u>
PSC	-\$588,800	-7.00
DOT*	588,800	4.00
DOA**	<u>200,000</u>	<u>0.00</u>
Total	\$200,000	-3.00

*The funding and position changes are included under DOT.

**This funding, which is included under DOA, would be PR-S for services provided by the Division of Hearing and Appeals in connection with the regulation of railroads, and would be funded through charges assessed to DOT.

Additional Provisions. In addition, make the followings changes: (a) when referring to signs and instruments for safety purposes, generally replace the word "protection" with the word "warning;" (b) delete language authorizing OCR to sue and be sued in that name, as there are no provisions preventing such actions with respect to the state agencies to which the responsibilities of OCR would be transferred under the bill; and (c) delete other statutory references to sections that would be deleted under these provisions.

Joint Finance/Legislature: Delete provision.

2. GPR-EARNED REESTIMATE [LFB Paper 640]

GPR-REV	- \$11,800
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Joint Finance/Legislature: Reduce GPR-Earned by \$5,300 in 2003-04 and \$6,500 in 2004-05 to reflect a reestimate of the amount generated on OCR's railroad assessments.